

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Bankruptcy 15-30125

The Archdiocese of Saint Paul and Minneapolis,

Debtor,

**NOTICE OF HEARING AND
MOTION FOR ORDER
APPOINTING A CREDITORS'
COMMITTEE OF PARISHES**

TO: The Court and all parties in interest.

Mary Jo A. Jensen-Carter of the firm of Buckley & Jensen, as counsel for a group of approximately 113 parishes located within the Archdiocese of Saint Paul and Minneapolis, all of which are general unsecured creditors in this Chapter 11 case, (the "Parish Group") respectfully moves the Court for the relief requested below and gives notice of hearing.

1. The Court will hold a hearing on this motion on April 2, 2015 at 10:00 a.m., in Courtroom 8 West United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.
2. Any response to this motion must be filed and delivered not later than March 28, 2015 which is five (5) days before the time set for the hearing (including Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
3. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. On January 16, 2015, The Archdiocese of Saint Paul and Minneapolis ("Archdiocese" or "Debtor") filed a petition under Chapter 11 of Title 11 of the United States Code, and the case is now pending in this court.

4. This motion arises under 11 U.S.C. §1102(a)(2) and the Parish Group seeks an order of this court appointing an official creditors committee consisting of all of the parishes in the Archdiocese.
5. The factual and legal basis for the Parish Group's motion is set forth in the accompanying Memorandum, and this motion is based on the information contained in such memorandum.

WHEREFORE, the Parish Group moves the court for an order appointing a committee of creditors consisting of the parishes in the Archdiocese of Saint Paul and Minneapolis and directing the United States Trustee's Office to form the committee, and granting such other relief as may be just and equitable.

Dated: March 17, 2015

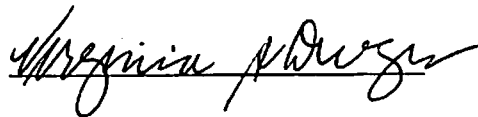
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VERIFICATION

I, Virginia A. Dwyer, a Trustee and the Secretary of The Church of Saint Joseph of West Saint Paul, Minnesota, a member of the movant, the Parish Group, certify under penalty of perjury, that I have read the Notice of Hearing and Motion for Order Appointing a Creditors' Committee of Parishes and the accompanying Memorandum in Support of Motion and the factual information contained therein is true and correct to the best of my knowledge, information and belief.

March 18, 2015.

A handwritten signature in cursive script, appearing to read "Virginia A. Dwyer", written over a horizontal line.

VERIFICATION

We, Mary Jo Jensen-Carter of Buckley & Jensen and Margo Brownell of Maslon, LLP, attorneys for the movant, certify under penalty of perjury, that we have read the Notice of Hearing and Motion for Order Appointing a Creditors' Committee of Parishes and the accompanying Memorandum in Support of Motion and the factual information contained therein is true and correct to the best of our knowledge, information and belief.

March 17, 2015.


Mary Jo A. Jensen-Carter

March 17 2015.


Margo Brownell

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Bankruptcy 15-30125

The Archdiocese of Saint Paul and Minneapolis,

Debtor,

**MEMORANDUM IN SUPPORT
OF MOTION TO APPOINT
PARISH CREDITORS' COMMITTEE**

FACTUAL BACKGROUND

There are 187 parishes that operate in the Archdiocese of Saint Paul and Minneapolis. Each parish is separately incorporated under Minnesota Statutes Section 315.15 as a parish corporation and is a legally distinct entity from the Archdiocese. The parishes are subject to the requirements, and have the rights, powers, and privileges, of a religious corporation. As such, the parishes own and manage their own property and assets, and have responsibility for their own corporate activities and debts.

Each parish is governed by a five member board of directors. The board consists of the Archbishop, the Vicar General, the parish pastor, and two lay trustees. Although the Archbishop and the Vicar General are members of the board, they generally do not participate in the day to day operations of the parish. Moreover, they have specifically agreed that they will not participate in any of the parishes' decisions related to the Chapter 11 case. As a result, the parish pastor and lay trustees are making all decisions related to the Chapter 11 case.

All of the parishes are creditors in the Chapter 11 case. Their creditor status stems from

several different factors. First, all the parishes participate in the Archdiocese's General Insurance Fund ("GIF") and the Archdiocese Medical and Dental Benefit Plan ("AMBP"). The parishes have contributed to these funds through payment of insurance premiums. According to Archdiocese estimates, these insurance funds currently hold approximately \$17.5 million in excess funds, as a result of overpayment of premiums during the past several years. The Archdiocese has acknowledged that only approximately 5-7% of the excess insurance funds were generated by Archdiocese contributions. The remaining excess funds were generated by the parishes and other entities that paid premiums into the plans. Consequently, the parishes have claims against the Archdiocese for their overpayment of premiums. In addition, several parishes have additional claims against the Archdiocese for return of funds they contributed to the Archdiocese Inter Parish Loan Fund or through other ordinary course of business financial transactions with the Archdiocese.

Also, a significant number of the parishes have indemnification claims against the Archdiocese as a result of the claims of the clergy abuse creditors. These claims arise from the fact that the Archdiocese has the sole authority to assign its priests to the parishes. The priests are employed by the parishes and the parishes pay their salaries and benefits out of their own operations. Many of the alleged clergy abuse claims arose while the priests were working in the parishes, thereby submitting the parishes to potential liability for the claims. While no separate lawsuits have been served or filed against the parishes at this time, many parishes have received Notices of Claim, which indicate that the clergy abuse creditors intend to sue the parishes for damages resulting from the abuse that allegedly occurred in their parishes. At the present time there are in excess of 83 claims asserted against various parishes, and additional claims are expected. To the extent that the parishes are ultimately held liable for any abuse, they will have

substantial indemnity and contribution claims against the Archdiocese.

The parishes will assert these indemnity claims against the Archdiocese. Parishes which are represented by counsel are certainly aware of their right to file their claims. The parishes have also been advised by their attorneys that because they face independent liability for these claims, they must tender them to their own insurance companies.

Since 1980, most of the Archdiocese parishes were insured for their liability through the Bishop's plan, which is administered by the Archdiocese. As a result, the insurance policies related to the claims that arose during that time period have been easily identified and the parishes are covered under the same policies as the Archdiocese. However, prior to 1980, the timer period when most of the alleged abuse occurred, the parishes each had their own independent insurance policies. The Archdiocese has no contractual connection to the policies the parishes held prior to 1980 and has no way of identifying the policies or getting access to them without the cooperation of the parishes. The attorneys for the parishes have been assisting the parishes in identifying their insurance coverage and tendering claims to their insurers.

This court has previously ordered the debtor, the unsecured creditors committee and the debtor's insurers to participate in mediation in an effort to come to a consensual agreement to resolve the Chapter 11 case. Understanding the complexity of the situation and the important contribution the parishes and their insurers can make to the success of a Chapter 11 plan, the mediator has asked the parishes to participate in the mediation process. The goal of the parishes' participation is to identify insurance companies who are responsible for insuring the parishes against claims which could be brought by the clergy abuse creditors directly against the parishes. The expectation is that the parishes' insurers will participate in the settlement of claims against

the parishes to avoid defending direct lawsuits against the parishes. Any funds which can be generated through the parishes' insurers could be contributed to the Archdiocese's Chapter 11 plan in exchange for the insurers receiving channeling injunctions and the parishes receiving a complete release for all potential clergy abuse claims. If this outcome can be achieved through the mediation process, all of the clergy abuse claims against the Archdiocese and the parishes will be resolved through the Chapter 11 plan and the clergy abuse litigation will end. In addition, the parishes' indemnity claims against the Archdiocese will be reduced, if not completely eliminated. If the parishes cannot resolve their own potential liability through the mediation process, it is likely that a second phase of direct litigation against parishes will result and the parishes' indemnity and contribution claims will be magnified.

In an effort to facilitate this broad settlement, the Parish Group retained Mary Jo Jensen-Carter of Buckley & Jensen to represent the group in the Chapter 11 case. Upon learning of the complexities of the insurance coverage issues, the Parish Group also retained Margo Brownell of Maslon, LLP as insurance coverage counsel. As requested by the mediator, the Parish Group has authorized both Jensen-Carter and Brownell to participate in the mediation process. The work involved in participating in the mediation and providing insurance coverage representation for the parishes which have claims is substantial. There are currently approximately 40 parishes in the Parish Group who have claims against them, all of which require day to day management of communications with the parish staff and dozens of different insurance claims representatives and attorneys, investigation and research regarding missing policies from the 1960 and 1970s, analysis of evidence, aggressive advocacy to overcome insurers' defenses to coverage, and high level strategic planning for a multi-party, multi-insurer mediation process in an effort to

maximize total insurer contribution. To date, counsel for the Parish Group has confirmed coverage under at least 15 policies of insurance, some of which are multi-year policies and cover multiple Notices of Claims.

While significant progress has been made, as the mediation continues to move forward, it has become apparent that the cost of the parishes' participation in the mediation is more than the Parish Group can financially bear. If the parishes cannot afford to continue to participate in the process, the overall goal of completely resolving all of the clergy abuse claims is not feasible. Appointment of a parish creditors' committee will not only provide representation for all of the parishes, but will also allow the parishes to continue to participate in the mediation process. Their participation should result in the availability of additional monies to fund the Chapter 11 plan, and that additional funding will increase the probability that the Archdiocese will be able to confirm a feasible plan of reorganization. Acknowledging the benefit of having the parishes involved in the process, the Archdiocese has advised the Parish Group that it supports this motion.

ARGUMENT

The appointment of an additional committee of creditors is governed by 11 U.S.C. §1102(a), which provides that:

On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders.

The statute itself does not specifically set forth a definition of “adequate representation”, and most courts confronted with a motion for the appointment of a separate committee have acknowledged that there is no bright line for determining if the committee should be appointed. As

a result, the bankruptcy court must exercise its discretion to examine the facts in each case and determine if additional committees are warranted. *In re Beker Indus. Corp.* 55 B.R. 945, 948 (Bankr. S.D.N.Y 1985)

In analyzing the need for an additional committee, the court should bear in mind that the Bankruptcy Code requires “that conflicting groups of creditors have a voice through adequate representation on a committee” and that “the ultimate aim is to strike a proper balance between the parties such that an effective and viable reorganization of the debtor may be accomplished.” *In re Hills Stores Co*, 137 B.R. 4, 7 (Bankr.S.D.N.Y 1992). As long as the diverse interests of various creditors groups can be adequately represented by one committee, there is no need to appoint additional committees. However, in the event that the interests of various creditor groups cannot be adequately represented by one committee, the court has discretion to appoint any committees necessary to provide adequate representation. *Hills Stores*, 137 B.R. at 5.

Although slight variation is found in existing case law, the following non-exclusive factors appear to be the most relevant in the inquiry into the appointment of an additional committee: the nature of the case; identification of the various groups of creditors and their interests; the composition of the committee; the standing and desires of the various constituencies; and the ability of the committee to properly function. *In re Dow Corning Corporation*, 194 B.R. 121, 142 (Bankr.E.D.Mich 1996); *Hills Stores*, 137 B.R. 5-6; *In re McLean Ind., Inc.*, 70 B.R. 852, 860 (Bankr.S.D.N.Y. 1987). The potential for added costs and complexity, as well as the timing of the motion seeking the appointment of the committee, are also relevant to the analysis. *Ad Hoc Bondholders Group v. Interco, Inc. (In re Interco)*, 141 B.R. 422, 424 (Bankr.E.D.Mo. 1992).

The Parish Group asserts that, even though the appointment of a second committee is

generally considered an exception rather than the rule in a Chapter 11 case, in this case, the appointment of a parish committee is necessary to adequately represent the interests of all parishes. The parishes are in a unique position. They are creditors having claims against the health insurance fund, the liability insurance fund and indemnity and contribution for any payments to the clergy abuse creditors. The parishes, through the contributions of their parishioners, also provide financial support to the debtor through their assessments. As a result, the parishes have a significant stake in the ultimate structure of the debtor's Chapter 11 plan.

When Congress enacted the Bankruptcy Code in 1978, it recognized that in some large and complex cases, a single creditors committee may not be sufficient. While this Chapter 11 case might not be classified as a large case, it is a unique case with complex relationships between the interested parties. Although there have been other similar Catholic diocese Chapter 11 cases, it does not appear that any have included an official parish creditors' committee. That is because, in most of those dioceses, the parishes were part of a corporation sole. As a result, there was no need for a parish committee, since the parishes were not separate entities. That is not the case here. Each parish is a separate and distinct legal entity with its own assets and liabilities. The parishes' interests are distinctly different from those of the debtor. Notwithstanding that fact, the parishes have a complex relationship with the Archdiocese in that they participate in various insurance plans operated by the Archdiocese and their assessments fund a large portion of the Archdiocese's operations. Their participation in the Chapter 11 case will allow the case to resolve a myriad of issues, including the clergy abuse issues, that will not be resolved if they do not participate. Appointing a parish creditors' committee will give all the parishes the ability to participate in the case in a meaningful way and assure that the interests of the parishes are adequately represented.

Accordingly, a parish creditors' committee is appropriate in this particular case.

One of the major issues confronting the parishes is that the existing unsecured creditors' committee is unable to adequately represent their interests. "For a particular group of creditors to be adequately represented by an existing committee, it is not necessary for a creditors committee to be an exact reflection of that committee's designated constituents." *In re Dow Corning Corporation*, 194 B.R. at 141. "[A]dequate representation exists as long as the diverse interest of the various creditor groups are represented on and have participated in that committee." *In re Sharon Steel Corp*, 100 B.R. 767, 777-778 (Bankr.W.D.Pa. 1989) In this case, the composition of the unsecured creditors' committee consists of solely of five clergy abuse creditors. Although the committee theoretically represents all of the unsecured creditors, no other class or category of creditor serves as a member of the committee. As a result, no other class or category of unsecured creditors has a voice on the committee. The attorneys hired to represent the committee have been chosen by a vote of only clergy abuse creditors. Under the circumstances, it is almost certain that the existing committee will take positions which favor the clergy abuse creditors. This becomes a significant issue because the interests of the clergy abuse creditors are adverse to the interests of the parishes. The existence of the conflict is abundantly clear by virtue of the Notices of Claims which have been served upon many of the parishes. These notices assert that the clergy abuse creditors intend to sue the parishes individually for the alleged abuses that may have occurred in their parishes. Based upon this obvious conflict of interest between the members of the existing unsecured creditors' committee and the parishes, it is impossible for the existing committee to adequately represent the interests of the parishes.

This conflict of interest also makes it impossible for the existing committee to function as a

true unsecured creditors committee in the Chapter 11 proceeding. In reality, this committee may function well, in that it will be able to reach consensus on issues, but that does not mean that it will function for the purposes of representing the parishes. A creditors committee is not functional “if the committee is so dominated by one group of creditors that a separate group has virtually no say in the decision-making process.” *In re Dow Corning Corporation*, 194 B.R. at 142. Consequently, the court must “look to see whether conflicts of interest on the committee effectively disenfranchise particular groups of creditors.” *In re Sharon Steel*, 100 B.R. at 779. The rationale of the court in *Sharon Steel* is clearly applicable in this case. The interests of the current members of the existing unsecured creditors’ committee are in direct conflict with the interests of the parishes. As a result, expecting the parishes to be represented by the existing committee effectively disenfranchises them.

Although it is clear that the parishes will not be adequately represented by the existing unsecured creditors’ committee, most courts suggest that several other discretionary factors should be considered before appointing a separate committee. Those factors include the cost associated with the appointment, the time of the application, the potential for added complexity, and the presence of other avenues for creditor participation. *Hills Stores*, 137 B.R. at 7-8; *Interco*, 14 B.R. at 424.

In light of the fact that the case is in its infancy and the existing unsecured creditors committee was very recently appointed, the appointment of a parish committee at this time will not cause any disruption in the case. As a result, there is no problem with the timing of the Parish Group’s request for the appointment of a separate committee.

Neither is the appointment of a parish committee likely to add complexity to the case. As noted earlier, the mediator specifically requested that the parishes participate in the mediation

process, and the Parish Group has already begun to participate. The debtor, the mediator, and the existing unsecured creditors' committee have welcomed the parishes' participation in the mediation process. In fact, the general consensus is that enlisting the parishes and their insurers in the mediation process will result in the best outcome for everyone involved. Accordingly, there is no indication that the appointment of a parish committee will do anything other than enhance the mediation process, and in turn, the Chapter 11 reorganization.

The final two considerations which must be addressed are the cost associated with the appointment of a committee and the presence of other avenues for creditor participation. There is no doubt that there will be costs associated with appointing a parish committee. It is likely that the parish creditors' committee would seek to employ both Chapter 11 bankruptcy counsel and special counsel to handle insurance coverage issues. Chapter 11 bankruptcy counsel is necessary to advise the committee on ongoing Chapter 11 issues and represent the interests of the parishes during the negotiation of the Chapter 11 plan. Separate insurance coverage counsel is also needed because the insurance coverage issues are complex and require expertise that is not available from a bankruptcy attorney. However, to the extent that insurance counsel is successful in bringing the parishes' insurers and insurance coverage to the mediation process, substantial additional funds will be generated for the estate. Those funds will be of significant importance not only in funding the debtor's Chapter 11 plan and thereby adequately compensating the clergy abuse survivors, but also in assuring that the parishes will be able to continue to operate their churches after the plan is confirmed. The diverse nature of the issues that the attorneys will be working on should result in little or no duplication of services.

While additional costs will be incurred by the estate if a parish committee is established, the

parishes' lack of adequate representation on the existing committee outweighs those costs. All interested parties agree that the parishes need to participate in the case. However, the cost of doing so is beyond their means. The Archdiocese was forced to file Chapter 11 case because of the clergy abuse claims. That same issue has also negatively impacted the finances of all of the parishes. The operations of both the Archdiocese and the parishes who support it, depend on the goodwill and financial support of the parishioners of the parishes. The clergy abuse issues have resulted in many parishioners withholding funds from the parishes. As a result, most, if not all, the parishes are struggling to meet their daily operating expenses. They are simply not in a position to expend large sums of money on attorneys' fees. If they cannot obtain committee status and assistance with those fees, their involvement in the process will be significantly limited. As a result, the parishes have no other avenue to effectively participate in the case.

CONCLUSION

The 187 parishes operating in the Archdiocese of Saint Paul and Minneapolis are creditors holding significant claims against the Archdiocese. As such, they are entitled to adequate representation on a creditors' committee. The existing unsecured creditors' committee, whose composition consists solely of clergy abuse creditors, cannot adequately represent the parishes because their interests conflict with those of the parishes. The parishes have the opportunity to make a significant contribution to the debtor's Chapter 11 plan through the use of their individual insurance policies and can likely assist the parties in obtaining a successful outcome in the pending mediation process. Due to the impact of the clergy abuse issues on the parishes, they do not have the financial means to participate in the mediation process outside of a parish committee. In light of the benefits that will be derived from the participation of the parishes in the Chapter 11 process, the

costs associated with appointment of a parish committee are justified, and the Parish Group requests the court appoint a parish creditors' committee.

Respectfully submitted,

Dated: March 17, 2015

BUCKLEY & JENSEN

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 11

The Archdiocese of Saint Paul and Minneapolis,

Bankruptcy No. 15-30125

Debtor

UNSWORN CERTIFICATE OF SERVICE

I, Ann M. Gagner, declare under penalty of perjury that on March 18, 2015, I served copies of the attached **Notice of Hearing and Motion for Order Appointing a Creditors' Committee of Parishes, Memorandum in Support of Motion to Appoint Parish Creditors' Committee and a proposed Order** by first class U.S. Mail, to the following parties:

JOHN PHILIP BORGER on behalf of Interested Party Star Tribune Media Company LLC FAEGRE & BENSON 90 S 7TH ST MINNEAPOLIS, MN 55402-3901	Eric E. Caugh on behalf of 21st Century Centennial Insurance Company Zelle Hoffman Voelbel & Mason LLP 500 Washington Avenue South, Suite 4000 Minneapolis, MN 55415
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The following parties were served by email by the Court:

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Dated: March 18, 2015

Signed: /e/ Ann M. Gagner

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Bankruptcy 15-30125
Chapter 11 Case

Archdiocese of Saint Paul and Minneapolis,

Debtor,

At Minneapolis, Minnesota, April __, 2015.

A hearing on the Parish Group's motion for the appointment of a Parish Creditors' Committee was held on April 2, 2015. Appearances are noted in the court record.

Based upon the motion papers and the arguments of counsel,

IT IS HEREBY ORDERED:

1. The appointment of a separate unsecured creditors' committee for the parishes is necessary to provide the parishes with adequate representation in this case; and
2. The United States Trustee is hereby ordered to appoint a parish creditors' committee.

Dated:

Robert J. Kressel
United States Bankruptcy Judge